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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Marilyn Bitisillie,

Plaintiff,

v.

Debra Haaland,

Defendant.

Case No. 3:23-cv-00545-CLB

**Order Granting Unopposed Motion
for Exception from Attendance
Requirements for Early Neutral
Evaluation (Zoom Video Conference)**

Defendant Debra Haaland, in her official capacity as Secretary of U.S. Department of the Interior ("Federal Defendant"), moves for an exception from the requirements, as applicable, that the early neutral evaluation by video be attended by all parties and by a representative any insurance carrier with authority to settle the matter up to the full amount of the claim. *See* Order at 2:14-21, ECF No. 13. Undersigned defense counsel has consulted with Plaintiffs' counsel, who advises that he does not object to the exception requested herein, namely, that the Federal Defendant be permitted to participate in the settlement conference via the video attendance of undersigned defense counsel, AUSA R. Thomas Colonna, with a representative of the Bureau of Indian Affairs ("BIA") available by phone. There is no liability insurance carrier involved in this matter.

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I. Introduction

This is an age and gender discrimination case brought by Plaintiff Marilyn Bitisille against her former supervisor, Robert Eben, and the Agency Bureau of Indian Affairs (“BIA”) of the U.S. Department of the Interior, for which she still works as a Branch Chief of the Self Determination Office.

II. Points and Authorities

The federal government is unlike other litigants in terms of geographic breadth, nature of issues, and number of cases. *See United States v. Mendoza*, 464 U.S. 154, 159 (1984). The authority to settle most civil cases against the government rests with varying management personnel within the local United States Attorney’s Office or at the Department of Justice (“DOJ”) headquarters, depending on the dollar amount and the concurrence of the client agency. *See* 28 C.F.R. § 0.168(a); 28 C.F.R. Part 0, Subpart Y, Appendix.

As the advisory committee recognized, “[p]articularly in litigation in which governmental agencies . . . are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility.” Fed. R. Civ. P. 16 advisory committee’s note (1993 amendment, subdivision (c)). Additionally, a district court can consider alternative methods of participation, such as via telephone. *See United States v. U.S. Dist. Court*, 694 F.3d 1051, 1061 (9th Cir. 2012).

The United States Attorney’s Office understands the importance of ENEs, settlement conferences, and other alternate dispute resolution techniques in resolving civil cases. This office has participated in many of them, in good faith, and consistent with the authority set forth in the applicable regulations.

Recommendations (through the respective DOJ and client agency chains of command) regarding any particular settlement proposal in this case will originate with the undersigned AUSA and assigned BIA attorney.

1 Based on the reasons and circumstances above, the Federal Defendant respectfully
2 requests exception from the Order's requirements of attendance by a representative via
3 video with binding settlement authority. In lieu of such requirements, the undersigned
4 AUSAs would attend via video and participate, while a BIA representative would be
5 available by phone.

6 **III. Conclusion**

7 Based on the reasons and circumstances above, the United States respectfully
8 requests that the Court grant this motion so as to allow AUSA Colonna to participate in
9 the early neutral evaluation via video, with a BIA representative available by phone, in lieu
10 of the video attendance requirements otherwise set forth in the Order, ECF No. 13.

11 Respectfully submitted this 25th day of April, 2024.

12 JASON M. FRIERSON
13 United States Attorney

14 /s/ R. Thomas Colonna
15 R. THOMAS COLONNA
16 Assistant United States Attorney

17 **IT IS SO ORDERED:**

18 
19 UNITED STATES MAGISTRATE JUDGE

20 **DATED:** April 25, 2024